

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- v. -

22 Cr. 352-1 (JSR)

JATIEK SMITH, et al.,

Defendants.

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MOTION TO SUPPRESS EVIDENCE AND
TO DISMISS INDICTMENT

PLEASE TAKE NOTICE, that upon the annexed declaration of THOMAS H. NOOTER, attorney of record for the defendant JATIEK SMITH, and the annexed declaration of JATIEK SMITH, the defendant in this action, and upon the annexed Memorandum of Law and Exhibit submitted by THOMAS H. NOOTER and JILL R. SHELOW, co-counsel for defendant JATIEK SMITH, the defendant JATIEK SMITH will move this Court pursuant to Rule 12(b)(3)(A)(iv), Fed. R. Crim. Procedure, on March 7, 2023, at 3:00 p.m. of that day before the Honorable Jed S. Rakoff, United States District Judge, Southern District of New York, at the U.S. Courthouse located at 500 Pearl Street, New York, New York, for an ORDER:

1. Suppressing evidence seized on March 2, 2023 at Newark International Airport, consisting of a “preliminary and initial” viewing of the contents of a cellular telephone in the possession of defendant JATIEK SMITH, and a “forensic” image of the cellular telephone, made by taking the entire digital contents of the cellular telephone and downloading it onto some other data storage device within several days of the initial seizure of the cellular telephone, all without consent of the defendant, reasonable suspicion as to the ongoing commission of a crime

involving the border of the United States, without probable cause, and without obtaining a search warrant to view the forensic image of the cellular telephone until after it had been seized and the data contents had been copied and stored in the custody of law enforcement officers;

2. Suppressing an eavesdropping warrant and an extension thereof obtained by using the cellular telephone data illegally seized on March 2, 2021 from the defendant Jatiek Smith, and a search warrant of his premises, also obtained using using the cellular telephone data illegally seized on March 2, 2021 from the defendant Jatiek Smith, as “fruits of the poisonous tree;”

3. Dismissing the indictment in this case as being the product of an impermissible “selective prosecution” or granting JATIEK SMITH the opportunity to obtain discovery from the government and an evidentiary hearing on his claim of selective prosecution;

4. Joining in the motions of co-defendants in this case to the extent they apply to defendant JATIEK SMITH, including the motion by counsel for co-defendant SEQUAN JACKSON, seeking suppression of the fruits of the eavesdropping and search warrants, and counsel for co-defendants McGEE, SMALL, DORE and LACEWELL seeing an order in limine to exclude evidence of gang affiliations, and seeking advance notice of evidence to be offered by the government pursuant to Rule 404(b) of the Federal Rules of Evidence, and

5. for such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 15, 2023

Yours, etc.,

/s/ Thomas H. Nooter
THOMAS H. NOOTER

/s/ Jill R. Shellow
JILL R. SHELOW
Attorneys for Defendant Jatiek Smith

TO: Office of the United States Attorney
Southern District of New York